

## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

## Narragansett Indian Tribe Liquor Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

**SUMMARY:** This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that Resolution No. TC-95-0228.1, the Narragansett Indian Tribe Liquor Ordinance was duly adopted by the Narragansett Indian Tribal Council on February 28, 1995. The Ordinance provides for the regulation of the activities of the regulation, manufacture, distribution, possession, sale, and consumption of liquor on the Narragansett Indian Reservation under the jurisdiction of the Narragansett Indian Tribe.

**DATES:** This Ordinance is effective as of July 17, 1995.

**FOR FURTHER INFORMATION CONTACT:** Chief, Branch of Judicial Services, Division of Tribal Government Services, 1849 C Street, NW., MS 2611-MIB, Washington, D.C. 20240-4001; telephone (202) 208-4400.

**SUPPLEMENTARY INFORMATION:** The Narragansett Indian Tribe Liquor Ordinance is to read as follows:

### Liquor Ordinance of the Narragansett Indian Tribe

#### Chapter 1 Declaration of Authority and Purpose

1.1. Title. This ordinance shall be known as the "Narragansett Liquor Ordinance".

1.2. Authority. This Ordinance is enacted pursuant to the Act of August 15, 1953 (Pub.L. 83-277, 67 Stat. 588, 18 U.S.C. 1161) and by the authority of the Narragansett Tribal Council.

1.3. Purpose. (a) The purpose of this Ordinance is to regulate and control the possession, sale, and distribution of alcoholic beverages on the tribal lands of the Narragansett Indian Tribe. The introduction, possession, sale and distribution of alcoholic beverages on lands of the Narragansett Tribe is a matter of special concern to the Tribe. The enactment of a tribal ordinance governing the trafficking of alcoholic beverages will increase the ability of the tribal government to reasonably control the distribution and possession of alcoholic beverages, promote

temperance, and at the same time provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal services.

(b) Federal law currently prohibits the introduction of liquor into Indian country, 18 U.S.C. 1154, unless the tribe having jurisdiction over that Indian country enacts an ordinance authorizing such introduction in accordance with 18 U.S.C. 1161. Because of the many potential problems associated with the unregulated or inadequately regulated sale, possession, distribution or consumption of liquor within Indian country, the Tribal Council recognizes the need for strict regulation and control over liquor transactions within the Tribe's lands. The Tribal Council finds that exclusive tribal control and regulation of liquor is necessary to achieve maximum economic benefit to the Tribe, to protect the health and welfare of our Tribal members, and to address specific tribal concerns relating to alcohol use on the Tribe's lands. All of the provisions of this Ordinance shall be liberally construed for the accomplishment of that purpose.

(c) The Tribal Council therefore finds that it is in the best interests of the Tribe to enact this Ordinance. The purchase, distribution, sale and consumption of alcohol shall take place only at tribally-owned enterprises and/or tribally-licensed establishments operating within the exterior boundaries of the Reservation.

1.4. Effective Date. This ordinance shall be effective on certification by the Secretary of the Interior and its publication in the **Federal Register** in accordance with 18 U.S.C. 1161.

#### Chapter 2 Definitions

2.1. Definitions. [3-1-1] Unless the context otherwise requires, the words and phrases herein defined are used in this ordinance in the sense given them in the following definitions:

(a) "Alcoholic beverage" or "beverage"—Any liquid which either by itself or by mixture with any other liquid or liquids is or may become fit for human consumption as a drink and which contains five-tenths of one percent (.5%) or more of alcohol by weight. Alcoholic beverage is synonymous with the term "liquor" as defined herein.

(b) "Commission"—The Narragansett Tribal Gaming Commission.

(c) "Convention"—To include conventions, banquets, political rallies, trade shows, exhibitions, charity balls and other similar gatherings in conformity with ordinances of the Tribe

which are held primarily for persons over eighteen (18) years of age.

(d) "His, him, he" or other masculine gender pronoun shall apply to the female as well as the male gender without distinction.

(e) "Intoxicating beverage"—A beverage which contains more than three and two-tenths percent (3.2%) of alcohol by weight.

(f) "Malt beverage"—Any beverage which is usually produced at breweries, as distinguished from distilleries.

(g) "Nonintoxicating beverage"—A beverage which contains not more than three and two-tenths percent (3.2%) of alcohol by weight.

(h) "Reservation"—All lands of the Narragansett Tribe, title to which is held in trust by the United States.

(i) "State"—The State of Rhode Island and any state or local entity granted any licensing or regulatory authority pursuant to the Alcoholic Beverage Laws of Rhode Island.

(j) "Tavern"—Any house where the principal business is the furnishing of food and sleeping accommodations.

(k) "Tribal lands"—All lands of the Narragansett Indian Tribe, whether title thereto is held in trust by the United States or in fee subject to restriction against alienation imposed by the United States.

(l) "Victualing house"—Any shop or place where a substantial part of the business is the furnishing of food for consumption at the place where it is furnished.

(m) "Wholesale quantities"—Malt beverages in excess of eight (8) gallons, or in excess of three (3) gallons as to any wine or any non-malt beverage consisting in whole or in part of alcohol produced by distillation.

(n) "Wines"—All fermented alcoholic beverages made from fruits, flowers, herbs, or vegetables and containing not more than twenty-four percent (24%) of alcohol by volume at sixty degrees Fahrenheit (60°F), except cider containing not more than three percent (3%) or containing more than six percent (6%), of alcohol by weight at sixty degrees Fahrenheit (60°F).

#### Chapter 3 Powers of Enforcement

3.1. Powers of Enforcement. [3-2-2] There is hereby established a branch of the Tribal Gaming Commission known as the Liquor Division. This branch shall be constituted as an agency and department of the Tribal Gaming Commission. The Tribal Council, in furtherance of this ordinance, delegates the following powers and duties to the Narragansett Gaming Commission:

(a) To publish and enforce rules and regulations which shall be adopted by

the Tribal Council governing the sale, manufacture, distribution and possession of alcoholic beverages on tribal lands;

(b) To employ personnel as shall be reasonably necessary to allow the Commission to perform its functions. Such employees shall be tribal employees;

(c) To issue licenses permitting the sale, manufacture, distribution and transportation of liquor on tribal lands;

(d) To hold hearings on violations of this ordinance or for the issuance or revocation of licenses hereunder;

(e) To bring suit in a court of competent jurisdiction to enforce this ordinance as necessary;

(f) To determine and seek damages for violations of this ordinance;

(g) To make such reports as may be required by the Tribal Council;

(h) To collect taxes and fees levied or set by the Tribal Council and to keep accurate records, books and accounts; and

(i) To exercise such other powers as may be delegated by the Tribal Council.

3.2. Limitation on Powers. In the exercise of its powers and duties under this Ordinance, the Tribal Gaming Commission and its individual members shall not:

(a) Accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer, or distributor or from any licensee;

(b) Waive the immunity of the Narragansett Tribe from suit without the express written consent of the Tribal Council.

3.3. Inspection Rights. [3-12-3] The premises on which liquor is sold or distributed shall be open for inspection by the Tribal Gaming Commission at all reasonable times for the purposes of ascertaining whether the rules and regulations of the Tribal Council and the liquor laws of the Tribe are being complied with.

#### *Chapter 4 Sales of Alcoholic Beverages*

4.1. License Required. [3-5-1] No sales or distribution of alcoholic beverages shall be made within the Reservation, except at a tribally-licensed or tribally-owned business operated within the Reservation.

4.2. Sales Only on Reservation. All alcoholic beverage sales shall be on the Reservation. No alcoholic beverage sales shall be allowed within the exterior boundaries of tribal lands which are not held in trust.

4.3. Sales for Cash. All alcoholic beverage sales authorized herein shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that this

provision does not prevent the payment for purchases with the use of credit cards such as Visa, Master Card, American Express, etc., with the exception of such other credit arrangements as set forth in the Tribe-State compact.

4.4. Sale for Personal Consumption. All sales and distribution of alcoholic beverages shall be for the personal use and consumption of the purchaser. Resale of any alcoholic beverage purchased within the exterior boundaries of the Tribe's trust lands is prohibited. Any person who is not licensed pursuant to this Ordinance who purchases an alcoholic beverage within the boundaries of the Tribe's trust lands and sells it, whether in the original container or not, shall be guilty of a violation of this Ordinance and shall be subjected to paying damages to the Tribe as set forth herein.

4.5. Solicitation and Sales. No person shall act as a solicitor or salesman for a manufacturer or wholesaler of alcoholic beverages on the licensed premises without having obtained a proper permit from the State and the Commission. Any applicant for a tribal permit under this section shall file with the Commission, a true and correct copy of his/her current state permit which shall entitle that person to solicit and sell on any tribally licensed premises, provided he complies with the terms and conditions of the tribal permit as set by the Commission. Any revocation or termination of the State permit shall constitute a simultaneous revocation or termination of the tribal permit.

#### *Chapter 5 Licensing*

5.1. License Required for Sale, Distribution or Importation of Beverages. [3-5-1] In order to control the proliferation of establishments on the Tribe's trust lands which sell or provide alcoholic beverages by the bottle or by the drink, no person shall at any time sell or suffer to be sold or distributed or keep or suffer to be kept on his premises or possession or under his charge for the purpose of sale or distribution within the Tribe's trust lands any beverage unless licensed thereto by the Commission as hereinafter provided.

5.2. State licensing. No person shall be allowed or permitted to sell or distribute alcoholic beverages on the Reservation if he does not also have a license from the State of Rhode Island. If such license from the State shall be revoked or suspended, the tribal license shall automatically be revoked or suspended as well.

5.3. Application. Any person applying for license to sell or distribute alcoholic

beverages on the Reservation must fill in the application provided for this purpose by the Commission and pay such application fees as determined herein from time to time by the Commission. Said application must be filled out completely in order to be considered.

5.4. Issuance of License. The Tribal Gaming Commission may issue a license if it believes that such issuance is in the best interests of the Tribe and its members. All licenses to be issued hereunder shall be in such form as shall be prescribed by the Commission; and the license shall be held under such rules and regulations as the Commission shall impose, establish and authorize; and the Commission is hereby authorized to establish such rules and regulations as in their discretion in the public interest shall seem proper to be made. Notwithstanding any of the foregoing provisions of this section, the adoption or authorization of rules and regulations by the Commission, and the modification or repeal of any rules and regulations previously adopted, shall be by written order of the Commission and adopted in accordance with the then current procedures or by-laws for conducting official functions of the Commission.

5.5. Signature on Licenses-Posting and Exhibition. [3-5-18] Licenses issued hereunder shall bear the signature written by hand of the Chairman of the Narragansett Tribal Gaming Commission, or other such Tribal Gaming Commissioner as designated and delegated by the Chairman, and shall not be printed, stamped, typewritten, engraved, photographed or cut from one instrument and attached to another; and shall be kept posted in plain view by the licensee in a conspicuous position in the room or place licensed, and shall be exhibited on demand to any Gaming Commissioner, Tribal Law Enforcement Officer, or authorized federal or state official.

5.6. Contents of Licenses. Any beverage license issued by the Commission shall state with specificity the following:

(a) Name and address of the licensed person or entity;

(b) Name and address of licensed premises;

(c) An exact description/location of the licensed premises;

(d) The days and hours when beverages may be sold or distributed;

(e) The expiration date of the license;

(f) The types of beverages authorized under the license or permit;

(g) The class of licenses or permits issued by the Tribe and State.

5.7. Non-Transferability of Licenses. [3-5-19] All licenses issued by the Commission under this ordinance shall be deemed non-transferable without prior written authority of the Commission.

5.8. Premises Covered. [3-5-9] Not more than one (1) retail license shall be issued for the same premises. Every license shall particularly describe the place where the rights thereunder are to be exercised and beverages shall not be kept for sale or sold by any licensee except at the place so described in his license.

5.9. Licenses to Keep or Sell Legal Beverages Only—Minimum Size of Containers. [3-5-12] Only beverages which have been legally manufactured and on which all taxes and charges—tribal, federal and state (if applicable)—have been paid, shall be kept for sale or sold by a licensee. Holders of Class B and J retailer's licenses shall not have on the licensed premises distilled or wine beverages in the containers, nor bottles, flasks or containers of less capacity than twenty-three ounces (23 oz.). Holders of Class B-H retailer's licenses are authorized to keep for sale and to sell distilled beverages in containers of a minimum capacity of fifty milliliters (50 mls.) or one and seven-tenths ounces (1.7 oz.).

5.10. Revocation or Suspension of Licenses; Fines for Violating Conditions of License. [3-5-21]

(a) Every license shall be subject to revocation or suspension, and the licensee shall be subject to civil fine by the Commission for breach by the holder thereof of the conditions on which it was issued, or for violation by the holder thereof of any rule or regulation applicable thereto, or for breach of any provisions of this section. Any revocation or suspension of a license or permit by the State shall constitute a simultaneous revocation or suspension by the Commission and no person or entity holding a license issued under this Ordinance shall be deemed to have acquired any vested interest therein. Any reinstatement of a license or permit by the State shall not constitute a reinstatement of the corresponding tribal license; the licensee must seek separate reinstatement of the tribal license from the Commission.

(b) Any fine imposed pursuant to this section shall not exceed Five Hundred Dollars (\$500) for the first violation and shall not exceed One Thousand Dollars (\$1,000) for each subsequent violation. For the purposes of this section, any violation committed by a licensee more than three (3) years after a previous

violation shall be considered a first violation.

5.11. Revocation and Suspension of Tribal License or Permit. Unless otherwise stated in the notice of suspension or revocation, the licensee shall cease any business conducted by authority of the license within 24 hours. Notice may be served by United States mail, or by personal delivery to the licensee, or by delivery to the licensed premises.

5.12. Period of License. Each license may be issued for a period not to exceed two (2) years from the date of the issuance.

5.13. Renewal of License. A licensee may renew its license if it has complied in full with this Ordinance and has maintained its licensure with the State of Rhode Island; provided, however, that the Tribal Gaming Commission may refuse to renew a license if it finds that doing so would not be in the best interests of the health and safety of the Narragansett Tribe.

#### *Chapter 6 Classes of Licenses*

6.1. Classes of Licenses. There shall be several classes of tribal beverage licenses.

##### *6.2. Class B License. [3-7-7]*

(a) A retailer's license, Class B, shall be issued only to a duly licensed bona fide tavern keeper or victualer whose tavern or victualing house may be open for business and regularly patronized at least from nine o'clock (9:00) a.m. to seven o'clock (7:00) p.m. and beverages may be sold or served to the maximum extent permitted by the laws of the State, except as otherwise limited by the Commission or other applicable law. It shall authorize the holder thereof to keep for sale and sell beverages including beer in cans, at retail at the place therein described and to deliver the same for consumption on the premises or place where sold, but only at tables or lunch bars where food is served; and it shall also authorize the charging of a cover, minimum or door charge; provided, however, that the amount of the cover, minimum or door charge shall be posted at the entrance of the establishments in a prominent place; provided, however, that holders of licenses shall not be permitted to hold dances within the licensed premises, unless proper permits have been obtained from the applicable licensing authorities; provided further, however, that any holder of a Class B license may upon the approval of the Tribe and State licensing authority, and for additional payment to the Commission of Five Hundred Dollars (\$500) open for business at twelve o'clock (12:00) p.m.

(b) A holder of a retailer's license, Class B, shall be allowed to erect signs advertising his business and products sold on the premises, including neon signs, and shall be allowed to light those signs during all lawful business hours, including Sundays and holidays.

(c) The annual fee for the license shall be, for a tavern keeper \$400-\$1,500 and for a victualer \$400-\$1,000; provided, however, that in reservations with a population of less than 2,500 inhabitants as determined by the last census taken under authority of the United States or the State, the fee for each retailer's Class B license shall be determined by the Tribal Council, but shall in no case be less than \$300; provided that if the applicant so requests in his application, any retailer's Class B license may be issued limiting the sale or distribution of beverages on the licensed premises to malt and wine beverages containing not more than twenty percent (20%) alcohol by volume, and the fee for that limited Class B license shall be \$200 annually. The fee for any Class B license shall in each case be pro-rated to the year ending December 31, in every calendar year.

##### *6.3. Class B-H License. [3-7-7.1]*

(a) A retailer's license, Class B-H, shall be issued only to a duly licensed hotel. It shall authorize the holder thereof to keep for sale and sell or distribute as provided herein distilled beverages in containers of a minimum capacity of fifty milliliters (50 ml.) or one and seven tenths ounces (1.7 oz.). The foregoing beverages shall be sold and served only in the room of the registered hotel guest. The foregoing beverages may be served in said hotel room at least from nine o'clock (9:00) a.m. to seven o'clock (7:00) p.m., and may be served in said room on a continuous basis, except as otherwise limited by the Commission, or applicable law.

(b) A Class B and B-H liquor license may be issued for the same duly licensed hotel, notwithstanding anything to the contrary herein.

(c) The annual fee for such license shall be \$100.

6.4. Class J Convention Hall License. [3-7-16] A retailer's license, Class J, shall authorize the holder thereof to keep for sale and to sell beverages at retail in the place therein described and to deliver the same for consumption on the premises where sold at the times when conventions may be held on those premises. The licensed premises may contain a bar. No Class J license shall be issued or held unless the licensee has adequate facilities to accommodate at tables five hundred (500) or more

persons at one time. Part of the licensed premises may be set apart as a kitchen and food may be served if the licensee is the holder of a victualing license. The Class J license shall authorize entertainment only in conformity with tribal and otherwise applicable ordinances, regulations, and laws. The annual fee for a Class J license shall be the same as for a Class B license.

6.5. Objection by Adjoining Property Owners-Proximity to Schools and Churches. Retailer's Class B license under this Ordinance shall not be issued to authorize the sale of beverages in any building where the owner of the greater part of the land within two hundred feet (200') of any point of such building shall file with the Commission his objection to the granting of such license; nor, in any building within two hundred feet (200') of the premises of any public, private, or parochial school or a place of public worship.

#### Chapter 7 *Illegal Activities*

7.1. Compliance with Applicable Laws. Any person or entity holding a license issued under this Ordinance shall comply with all statutes of the United States of America and the laws of the State of Rhode Island applicable to such licensee pursuant to said license, and the ordinances, resolutions, regulations and laws of the Tribe and Commission.

7.2. Illegal Sales of Liquor by Drink or Bottle. It shall be a violation of this Ordinance for any person to sell, by the drink or by the bottle, any liquor except as otherwise provided for in this Ordinance.

7.3. Illegal Transportation. It shall be a violation of this Ordinance for any person to sell or offer for sale or transport in any manner any liquor in violation of this Ordinance.

7.4. Illegal Purchase of Liquor. It shall be a violation of this Ordinance for any person within the exterior boundaries of the Reservation to buy liquor from any person other than at the properly authorized tribal retail outlet(s) or properly licensed enterprise operating on the Reservation.

7.5. Illegal Possession of Liquor; Intent to Sell. [3-5-1] It shall be a violation of this Ordinance for any person to keep or possess liquor upon his person or in any place or premises conducted or maintained by him as a principal or agent with the intent to sell it; unless such sale is otherwise authorized by this Ordinance.

7.6. Sales to Persons Visibly Intoxicated, Insane, Mentally Defective, Habitual User of Narcotics. [3-8-1] It shall be a violation of this Ordinance for any person to sell, furnish, give away,

barter, exchange or dispose of in any manner or cause to be tendered any alcoholic beverage on or within the tribal lands to any person who is known to be insane or mentally defective; or to any person who is visibly intoxicated; or to any person who is known to drink alcoholic beverages to excess; or to any person who is known to be an habitual user of narcotics or other habit forming drugs.

7.7. Possession or Use of Alcoholic Beverages by Underage Persons. [3-8-10] It shall be a violation of this Ordinance for any person to sell, furnish, give away, barter, exchange or dispose of in any manner or cause to be tendered any alcoholic beverage on or within the tribal lands to any person under the age of twenty-one (21) years either for his own use, the use of his parents, or the use of any other person.

7.8. Furnishing Alcoholic Beverages to Underaged Persons. [3-8-11.1] It shall be a violation of this Ordinance for any person to permit any other person under the age of twenty-one (21) years to consume alcoholic beverages purchased on premises under his control or ownership.

7.9. Sale of Alcoholic Beverages to Underage Persons. [3-8-1] It shall be a violation of this Ordinance for any person to sell alcoholic beverages to any person under the age of twenty-one (21) years.

7.10. Unlawful Transfer of Identification. [3-8-6] It shall be a violation of this Ordinance for any person to attempt to purchase an alcoholic beverage through the use of a false or altered identification which falsely purports to show the individual to be over the age of twenty-one (21) years.

7.11. Unlawful Drinking and Misrepresentation by Underage Persons. [3-8-6] (a) It shall be deemed a violation of this Ordinance for:

(1) Any person who has not reached his or her twenty-first (21st) birthday to enter any premises licensed for the retail sale of alcoholic beverages for the purpose of purchasing or having served or delivered to him or her alcoholic beverages; or

(2) Any person who has not reached his or her twenty-first (21st) birthday to consume any alcoholic beverage on premises licensed for the retail sale of alcoholic beverages or to purchase, attempt to purchase, or have another purchase for him or her any alcoholic beverage; or

(3) Any person to misrepresent or misstate his or her age, or the age of any other persons, or to misrepresent his or her age through the presentation of any of the following documents:

(aa) An armed service identification card, the identification card license, or any other documentation used for identification purposes that may belong to any other person who is of the age of twenty-one (21) years or older;

(bb) A motor vehicle operator's license which bears the date of birth of the licensee, and which is issued by the state of Rhode Island or any other state.

(cc) Any document presented for identification and known to such person to falsely represent the person's date of birth.

(b) Every licensee shall cause to be kept a book, or photographic reproduction equipment which shall provide the same information as required by the book, and such licensee and/or the licensee's employee shall require any person who has shown a document as set forth in this section substantiating his or her age, to sign that book or to permit the taking of his or her photograph and indicate what document was presented. Use of said photographic reproduction equipment shall be voluntary for every licensee.

(c) The "sign-in as minor" book and photographic reproduction equipment shall be the same as prescribed, published and approved at the direction and control of the state liquor control administrator.

(d) If a person whose age is in question shall sign the "sign-in as minor" book or have such photograph taken before he or she is sold alcoholic beverage or beverages and it is later determined that such person was a person who has not reached his or her twenty-first (21st) birthday at the time of said selling, it shall be considered prima facie evidence that the licensee and/or the licensee's employee acted in good faith in selling those alcoholic beverage or beverages to such person or persons so producing the document as set forth in this section misrepresenting his or her age.

7.12. Possession of Beverage by Underage Persons. [3-8-10] Any person who has not reached his or her twenty-first (21st) birthday who has in his or her possession any beverage as defined in this ordinance shall be fined One Hundred Dollars (\$100) for the first violation; Two Hundred Dollars (\$200) for the second violation; and Five Hundred Dollars (\$500) for the third or subsequent violation.

7.13. Purchase or Procurement of Alcoholic Beverages for Underage Persons by Adults. [3-8-11.1] It shall be deemed a violation of this ordinance for any adult to purchase from any licensee or any employee of any licensee for the sale, delivery, service of or giving away to or causing or permitting or procuring

to be sold, delivered, served or given away any alcoholic beverage to any person who has not reached his or her twenty-first (21st) birthday.

7.14. Penalty for Violation of 7.13. [3-8-11.2] Any adult who shall violate any of the provisions of 7.13 shall be fined Two Hundred Dollars (\$200) for a first violation, Four Hundred Dollars (\$400) for a second violation, and One Thousand Dollars (\$1,000) for the third or subsequent violation.

7.15. Penalty for Carrying Beverages for Unlawful Sale. [3-4-6] Every expressman, common carrier, or other person who, for the purpose of carrying to any other person, receives any beverage which has been sold or is intended for sale in violation of this Ordinance, having reasonable cause to believe that the same has been, or is intended to be so sold, shall be fined not more than \$500.

7.16. Waybill or Memorandum of Shipment Required. [3-4-7] Whenever beverages shall be transported in wholesale quantities as herein defined from the place where sold for delivery to the purchaser, the person in charge of the vehicle in which the beverage shall be transported shall, during the transportation, have in his possession a waybill or a memorandum from the seller to the purchaser showing the name and address of the seller and of the purchaser and the quantity and character of the beverage sold and transported. Upon the demand of any Tribal Gaming Commissioner or Tribal law enforcement officer or other authorized law enforcement officer, the person in charge of the transportation shall exhibit the waybill or the memorandum. The foregoing provisions shall apply to interstate transactions to the extent the Tribe in the exercise of its sovereignty may impose them. Any person transporting beverages in violation of this section shall be fined not more than \$50 for each violation.

7.17. Age Restriction for Bartenders. [3-8-2] It shall be a violation of this Ordinance for any person to be permitted to act as a bartender for the purposes of mixing, preparing, serving or selling from a bar which is used for the purpose of dispensing beverages in any licensed establishment operating under any license authorized by this Ordinance, who has not reached his eighteenth (18th) birthday.

7.18. Suspension of License for Employment of Underage Bartender. [3-8-3] Any licensee who violates, or permits to be violated, the provisions of section 7.17, shall be subject to the suspension of license for a period of at least three (3) calendar days for the first violation. The number of calendar days

of suspension shall be determined by the Commission which shall increase the period fixed for suspension if additional violations occur, but not to exceed one year.

7.19. Drinking by or Hiring of Underage Persons. [3-8-4] It shall be a violation of this Ordinance for any licensee to hire any persons who have not reached their eighteenth birthday to sell or serve beverages in any place where those beverages may be consumed on the premises where sold.

7.20. Personal Consumption by Employees. It shall be a violation of this Ordinance for any employee of a tribally owned or tribally operated establishment selling or distributing alcoholic beverages, during his working hours or in connection with his employment, to obtain, or to purchase for himself, or to consume alcoholic beverages.

7.21. Hours of Retail Sale. It shall be a violation of this Ordinance for an employee of a tribally authorized retail outlet to sell, dispose of, deliver, or give away alcoholic beverages on the retail outlet premises except during the normal posted business hours of the retail outlet. No sale, delivery or disposition of alcoholic beverages may occur on election days during the hours that polling places are open for voting.

7.22. Intoxicated Employees. It shall be a violation of this Ordinance for an employee of a tribally owned or operated retail outlet or enterprise which sells or distributes alcoholic beverages, when engaged in waiting on or serving customers, to consume alcoholic beverages or remain on or about the premises while in an intoxicated or disorderly condition.

#### *Chapter 8 Hearings and Appeals*

8.1. Petition to Commission for Rehearing. Any person aggrieved by a decision made or action taken by the Commission without notice and opportunity for hearing, may petition the Commission for a hearing and reconsideration. The petition shall be filed within thirty (30) days after the petitioner knew or should have known of the decision or action. The Commission shall grant a prompt hearing upon receiving such a petition, and shall reconsider its decision or action, affirm, modify, reverse and/or vacate its decision in writing to the aggrieved party or such party's representative in light of what is presented at a hearing.

8.2. Appeal of Commission Decision. Any person aggrieved by a decision made or action taken by the Commission after notice and opportunity for hearing may petition

any court of competent jurisdiction for review. Such petition shall specifically set forth the reasons for aggrievement, and be filed with the court no later than thirty (30) days after the Commission's decision or action. The court shall set the matter for hearing no later than thirty (30) days after receipt of the petition, and may, upon establishing that it has jurisdiction, affirm, modify, reverse and/or vacate the Commission's order.

#### *Chapter 9 Records and Reports*

9.1. Reporting to Commission and State. All records, reports or other documentation required to be provided to State authorities by any licensee shall also be provided to the Commission on the same basis and in the same form as required by the State. True and correct copies in lieu of originals shall be acceptable for filing with the Commission.

9.2. Reporting of Alcoholic Beverages Relating to Gaming. The price of any alcoholic beverage sold to a gaming customer in partial consideration for amounts wagered need not be billed by separate charge to the individual customer; provided, however, that the price of each such alcoholic beverage deemed sold to a gaming customer in partial consideration for amounts wagered shall be no less than the price required for such sales pursuant to the laws of the State and shall be separately accounted for by the tribal operation, any tax due under the laws of the State for the retail sale of such beverages shall be paid with respect to such sales, and daily and monthly records shall be maintained with respect thereto and shall be available for inspection by the State gaming agency and by the State Department of Liquor Control or any successor State agency.

9.3. Petition of Commission for Late Filing. Any licensee paying a penalty for late filing, or becoming subject to such penalty, or failing to file a report on time, and who believes he has an acceptable excuse, may petition the Commission for a waiver of the penalty. The petition shall be filed within thirty (30) days after the licensee knew or should have known that the payment was due, but not more than six (6) months after the due date in any case.

#### *Chapter 10 Taxes*

10.1. Sales Tax. There is hereby levied and shall be collected a tax on each retail sale of alcoholic beverages on the Reservation in the amount of two percent (2%) of the retail sales price. The tax imposed by this section shall apply to all retail sales of alcoholic beverages on the Reservation. No

municipality, city, town, county, nor the State of Rhode Island shall have any power to impose an excise tax on alcoholic beverages as defined by this Ordinance or govern or license the sale or distribution thereof in any manner within the Reservation except to the extent permitted by 18 U.S.C. 1161 and the provisions of the Tribal-State Compact. The tax hereunder shall not be effective until ordered by the Tribal Council and the Tribal Gaming Commission.

10.2. Distribution of Taxes. All taxes, license and permit fees, and profits from retail outlets owned or operated by the Tribe, shall be paid over to the Commission which in turn shall transfer such funds to the Treasurer of the Tribe and be subject to distribution by the Tribal Council in accordance with its usual appropriation procedures for essential governmental and social services; Provided, however, that priority in funding shall, to the greatest extent possible, be given to those tribal programs which demonstrate the greatest need and past successful performance in providing community services to Tribal members.

10.3. Income and Tax Reports. Along with payment of the taxes herein imposed, the taxpayer shall submit an accounting for the quarter, of all income from the sale or distribution of said beverages as well as for the taxes collected.

10.4. Audit. As a condition of obtaining a license, the licensee must agree to the review or audit of its book and records relating to the sale of alcoholic beverages on the Reservation. Said review or audit may be done periodically by the Tribe through its agents or employees whenever, in the opinion of the Tribal Gaming Commission or Tribal Council such a review or audit is necessary to verify the accuracy of reports.

#### *Chapter 11 Severability*

11.1. Severability. Each section of this Ordinance and each part of each section is hereby declared to be a separable and independent section, and the holding of any section or sections or part or parts thereof to be void, ineffective or unconstitutional for any cause, shall not be deemed to affect any other section or part thereof, unless necessary to the operation thereof.

#### *Chapter 12 Miscellaneous*

12.1. Conformity with State Laws and Tribal Liquor Ordinance. The introduction, possession, transportation and sale of beverages within tribal lands shall be in conformity with the provisions of this Ordinance and the

laws of the State of Rhode Island as that term is used in 18 U.S.C. 1161.

12.2. No Divestment of Jurisdiction or Immunity. Nothing in this ordinance grants or shall be construed to grant to the State or any agency, department or commission thereof, general state civil regulatory or taxing authority over the Tribe or its lands, property, members or activities except as expressly required by 18 U.S.C. 1161, or recognized by a valid Tribal-State Compact approved by the Secretary of the Interior. Additionally, nothing in this ordinance shall waive or be construed to waive the immunity of the Tribe or any agency, department, enterprise or commission thereof from suit without the express consent of the Tribe.

12.3. Tribe-State Compact. To the extent that any provision of any Tribal-State Compact entered into between the Narragansett Tribe and the State of Rhode Island are inconsistent with any provision of this Ordinance, the provisions of the compact shall govern.

12.4. Conflict of Interest. No member of the Narragansett Tribal Council or the Narragansett Gaming Commission or its employees, nor any member of the immediate household of any of the above may, directly or indirectly, individually or as a member of a partnership or as a shareholder of a corporation, have any interest whatsoever in the sale of alcoholic beverages or have any compensation or profit therefrom as may be licensed or permitted by this Ordinance. For purposes of this Ordinance "immediate household" is defined as son(s), daughter(s), step-son(s), step-daughter(s), spouse or spouses recognized by common-law and members of the family or of the household living in the same house.

12.5. Environmental Aspects. Any person or entity operating under a tribal beverage license shall maintain adequate and sufficient procedures for the separation, storage and re-cycling of all plastic, glass and aluminum waste products generated by virtue of its operation under the tribal license and shall at all times keep the licensed premises in a clean and orderly condition.

12.6. Access for State Agents or Inspectors. Duly authorized agents or inspectors of the State shall, upon presentation of their credentials, be granted immediate access to inspect any premises where beverages are stored, distributed or sold and to examine all books and records pertaining to the business conducted by virtue of the license. In the event such officials desire access to the licensed premises of any licensee of the Commission, said official

shall first present his or her credentials to the Commission representative on duty in the licensed premises who, together with an authorized representative of the licensed establishment, and an authorized representative of the management contractor, if any, shall insure that all officials are provided with all lawful access.

#### *12.7. Administration and Bonding.*

(a) The administration of all matters relating to the conduct of any business by virtue of a tribal beverage license shall be through the auspices of the Commission. The Commission may, at any time before or after the issuance of any license, order any applicant or licensee to post an acceptable surety bond in such an amount as is deemed appropriate, or to increase the amount of any existing bond.

(b) The amount of any bond or the increase in any bond shall be based upon such factors as the Commission deems material to the circumstances, including, by way of illustration, the financial stability and strength, and the business history of the applicant or licensee, or such other considerations as may be relevant to the applicant or licensee. The Commission shall provide any applicant or licensee with reasonable explanation of the basis for establishing or changing the amount of any bond and with sufficient time within which to acquire additional bond amounts, should the Commission make such an order.

#### *Chapter 13 Tribal Jurisdiction and Enforcement*

13.1. Authority. The Tribal Council, until such time as the Tribe has established and staffed a Tribal Court, shall have jurisdiction over all offenses and unlawful acts enumerated in this Ordinance when committed by an Indian, whether or not the violator is a member or non-member of the Narragansett Tribe.

13.2. Proof of Unlawful Activity. In any proceeding under this Ordinance, proof of one unlawful sale or distribution of alcoholic beverages shall suffice to establish prima facie intent or purpose of unlawfully keeping alcoholic beverages for sale, selling alcoholic beverages or distributing alcoholic beverages in violation of this Ordinance.

13.3. General Penalties. Any person adjudged to be in violation of this Ordinance shall be subject to a civil penalty as set forth herein. The Tribal Gaming Commission may adopt by separate rule or regulation, subject to Tribal Council approval, a schedule of fines for each type of violation, taking into account its seriousness and the

threat it may pose to the general health and welfare of the Tribal members. Such a schedule may also provide, in the case of repeated violations, for imposition of monetary fines in excess of those otherwise imposed for a first offense.

13.4. **Illegal Items Declared Contraband.** Alcoholic beverages which are possessed contrary to the terms of this Ordinance are declared to be contraband. Any tribal agent, employee, or officer who is authorized by the Tribal Gaming Commission to enforce this section shall seize all contraband which he shall have the authority to seize. All seized contraband shall be preserved in a secured area provided for storage of impounded property and he

shall promptly prepare an inventory, a copy of which shall be promptly delivered to the Tribal Gaming Commission. Upon being found in violation of this Ordinance by the Tribal Gaming Commission, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Narragansett Tribe.

*Chapter 14 Transmission to Secretary*

14.1. **Transmission to Secretary.** The Tribal Council shall, upon approval of this Ordinance, evidenced by a Tribal resolution, transmit the Ordinance, together with the Tribal resolution to the Secretary of the Interior for certification and publication.

*Chapter 15 Amendment*

15.1. **Amendment of Ordinance.** This Ordinance may only be amended by a majority vote of the Tribal Council. The Tribal Gaming Commission may, when it deems it necessary in aid of its administration of this Ordinance, propose written amendments to this Ordinance to the Tribal Council for consideration and adoption.

Dated: June 23, 1995.

**Ada E. Deer,**

*Assistant Secretary—Indian Affairs.*

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